IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 608 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE COMPANY LTD.

Versus

PRAGNABEN SATISCHANDRA THAKKER

Appearance:

1. Special Civil Application No. 608 of 2004

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

MR MA PAREKH for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 227 of the Constitution of India, the petitioner - Insurance company has challenged the legality and validity of the order passed by the Motor Accident Claims Tribunal (Main), Panchmahals at Godhra below Exh.3 in Motor Accident Claim Petition No.96 of 2003 under Section 140 of the Motor Vehicles Act, 1988 dated 26.6.2003, by which, the learned Tribunal has directed the petitioner and other original opponents to pay the amount of Rs.25,000/-.

#. Mr.P.V.Nanavati, learned advocate for the petitioner, has relied upon the investigation report dated 13.10.2003 in support of his submission that fraud has been perpetuated against the petitioner company and that there was no accident at all. He has also relied upon the affidavit of the owner of the vehicle in question in support of his submission.

#. Mr.M.A.Parekh, learned advocate for respondent No.1-original claimant, has submitted that at the relevant time there was no investigation report and on the basis of the materials available before the learned Tribunal, the learned Tribunal has passed the order below the application for interim compensation under Section 140 of the aforesaid Act, and, therefore, requested to dismiss the present petition.

#. Heard the learned advocates for the parties.

#. It is an admitted position that, at the relevant time when the learned Tribunal passed the order, there was no investigation report available with the petitioner, which is now subsequently available with the petitioner. Learned Tribunal passed the order on the basis of the materials available with it at the relevant time and on the basis of the investigation report and the affidavit of the owner of the vehicle in question. The petitioner has come out with the case that there was fraud perpetuated, and, therefore, wants to get the order passed by the learned Tribunal set aside. The petitioner has subsequently not approached the learned Tribunal for recalling of the order passed below Exh.3 for interim compensation under Section 140 of the aforesaid Act. Under the circumstances, appropriate remedy available to the petitioner is to first approach the learned Tribunal by moving appropriate application for recalling the order passed below Exh.3 along with necessary investigation report and to point out to the learned Tribunal that fraud has been perpetuated. Under the circumstances, the petitioner is directed to make appropriate application before the learned Motor Accident Claim Tribunal (Main),

Panchmahals at Godhra to recall the order passed below Exh.3 in Motor Accident Claim Petition No.96 of 2003 within a period of four weeks from today. On filing of the said application, the learned Tribunal is directed to decide and dispose of the same after giving opportunity to the concerned parties within a period of two months thereafter. Until then, the order passed by the learned Tribunal dated 26.6.2003 below Exh.3 in Motor Accident Claim Petition No.96 of 2003 is stayed. It is made clear that this Court has not gone into the merits of the case and it is ultimately for the Tribunal to decide and dispose of the application which is to be made by the petitioner on its own merits and in accordance with law without being influenced by the fact that this Court has extended ad-interim relief and stayed the order passed below Exh.3 till the application is decided.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)